IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 20287 of 2007(M)

AGAINST THE ORDER IN EP 161 2006 IN
OS.269/2004 of MUNSIFF COURT,ALUVA

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PETITIONER:

N. SHYAM KUMAR, S/O. NANU,
ANIYERI HOUSE KALADY KARA, KALADY VILLAGE.

BY ADV. SRI.SHAHUL HAMEED MOOPPAN
SRI.K.M.VARGHESE

RESPONDENTS:

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1. PERINGOTTUKARA NAMBOODIRI YOGASHEMA SABHA, ANTHICAD, REPRESENTED BY ITS SECRETARY.

2. K.V. SAJEEV, S/O. VASU,
KOSHNAYIL HOUSE, MATTOOR KARA, MATTOOR VILLAGE.

3. CHACKOCHAN, S/O. OUSEPH,
KUNNEKKADAN HOUSE, YORDHANAPURAM KARA,
THURAVOOR VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 20287 OF 2007 M

Dated this the 3rd July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Munsiff, Aluva in E.P.161/06. The learned Munsiff had ordered arrest and detention of the writ petitioner in civil prison by virtue of Section 51(a)(ii) CPC. Learned counsel for the writ petitioner submits that the prayer in the execution petition was to arrest and detention in civil prison for the purpose of realisation of the amount and not for any other grounds like proviso to Section 51(a)(ii) CPC. Even if an order is to be passed under Section 51(a)(ii) CPC the court has necessarily to enter a finding that the judgment debtor after the institution of the suit has dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property. What is stated in the order is only that he had transferred properties in favour of his wife during the pendency of the suit. Just because a transfer is effected, we cannot import that what is stated in Section 51(a)(ii) CPC is proved. Therefore there is lack of materials or discussion in the judgment on that regard. It has also to be stated that if the prayer is to arrest him and detention in civil prison for non-payment of the

amount after having sufficient means and neglect to pay, then this cause of action may not arise at all in the present execution petition. So the order lacks clarity and therefore it is only just and reasonable to set aside that order and remit back the case to the Munsiff for fresh disposal in accordance with law after affording opportunity to both sides. Since I am disposing of the matter in the admission stage, the court shall give notice of hearing to the decree holder. Until fresh decision is taken, the writ petitioner shall not be arrested in execution of the decree. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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